GIBSON, . . . APPELLANT.

THE REV. JOHN FORBES, RESPONDENT (*a*).

1852.
11th and 14th June.

The Clergy of Scotland are not liable to be assessed or rated for the relief of the poor in respect of their manses or glebes.

THE Respondent, as minister of the parish of Symington, was rated to the relief of the poor in respect of his manse and his glebe. Execution issued against him for non-payment. He presented a note of suspension. The *Lord Ordinary* (*Dundrennan*) reported the case to the First Division; who, on the 10th December, 1850, suspended the execution, and gave judgment in favour of the Respondent, with costs.

The Appellant, as inspector or collector of the poor, presented this appeal.

Mr. *Bethell* and Mr. *Anderson*, for the Appellant: Manses and glebes in Scotland are rateable to the relief of the poor under the 8 & 9 Vict. c. 83, which declares that assessments shall be imposed upon owners and occupants of all lands and heritages within the parish, without any exception of manses and glebes. The minister of a parish is included under the term owner, used in the statute. A claim of exemption ought to be very clearly made out. Whereas, here the Legislature evidently meant that the charge should be imposed. The judgment in *Cargill* v. *Tasker* (*b*)

(*a*) Reported in Court of Session Cases, Second or New Series, vol. xiii. p. 341.

(*b*) In *Cargill* v. *Tasker*, 29th Feb. 1816, 19 Fac. Coll. 103, the point occurred whether the clergyman of a parish was liable to be assessed for poor-rates. The Lord Ordinary found that he was liable to be assessed along with the other inhabitants of the parish, according to his means and substance; but the Court (First Division) thought it impossible to consider the minister as included in the statutes, for they were of opinion that, *quâ minister*, he was neither an heritor, a tenant, nor a possessor. They therefore altered the Lord Ordinary's interlocutor.

relied upon by the Respondent, does not apply to the law as now altered. It has no bearing upon the 8 & 9 Vict. c. 83, which uses the term "owner" instead of "heritor," to be found in the old enactments. And whatever may have been the former law, the late Act repeals all statutes and usages at variance with its own provisions.

The *Solicitor-General* (Sir *F. Kelly*) and Mr. *Rolt*, for the Respondent: Prior to the existing Poor-Law Act, it is certain that the clergy of the Church of Scotland were not liable to be thus rated in respect of their manses and glebes. The case of *Cargill* v. *Tasker* puts this beyond all doubt. Then the question is, what is there in the new Act to impose the liability? In other words, has that statute taken away an exemption formerly indisputable? The attention of Parliament was specially directed to this matter when the Scotch Poor-Law was under consideration. For example, the peculiar privilege of the College of Justice in Edinburgh was taken away; the Act expressly declaring that that body should no longer be free from the ordinary assessment. And the case of the clergy assuredly was not overlooked; for the 49th section specially enacted that they should be rated to the relief of the poor *in respect of their stipends;* thereby intimating irresistibly that in other respects they were to remain on their former footing, one of freedom from all liability.

Mr. *Bethell* replied.

The LORD CHANCELLOR (*a*):

Lord Chancellor's opinion.

My Lords, the question in this case, although important, lies in a narrow compass.

Before the late statute, we must take it to be clear that the clergy of Scotland were not liable to be rated

(*a*) Lord St. Leonards.

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to the relief of the poor, either in respect of their manses and glebes, or in respect of their stipends. The case of *Cargill* v. *Tasker* is a sufficient authority for that proposition. Whether that decision went simply on the construction of the old Acts of Parliament (*a*) may admit of some doubt, because those Acts do use expressions which, in my apprehension, would have included ministers. Nevertheless, it has been held in Scotland, and it was considered at the time when the late general Act was passed, to be the law of Scotland, —that ministers were exempt from assessment not only in respect of their manses and glebes, but also in respect of their stipends.

Then came the general Act, the existing statute passed for the amendment and better administration of the laws relating to the relief of the poor in Scotland.

Now, with reference to that Act, I should myself have been clearly of opinion that its first clause was quite sufficient to include ministers, and fix them with liability in respect of their manses and glebes; for it speaks of "owners;" and ministers are in a sense owners. But the section does more. It represents owners as persons who are "in the actual receipt of rents and profits." The 34th section again both describes the manner in which the assessment is to be made, and the persons upon whom it is to be charged,—using the expression "all the inhabitants according to their means and substance;" and then the 91st section repeals all former laws and usages at variance with the statute. So that, my Lords, upon these provisions taken together, I should have held it to be perfectly clear that ministers were to be subject to liability, in respect of their manses, glebes, and stipends, had it not been for the important clause in the Act, to which I am now to direct your Lordships' attention.

(*a*) The Acts of 1579, c. 74; 1663, c. 16; and 1672, c. 18.

By that clause,—the 49th section of the Act —it is provided "that clergymen shall be liable to be assessed for the poor *in respect of their stipends.*" This is an independent substantive enactment, introduced by itself, and of so much importance as to form a separate section. Now, what does it prove? To my apprehension it proves clearly that the words in the 1st and 34th sections were not intended to have the extensive operation which I should otherwise have ascribed to them. Because, if by those words it was really meant to fix the clergy of Scotland with a general liability, an express and separate provision for the purpose would have been superfluous. The 1st and 34th sections, therefore, must be considered as having left the clergy in the full enjoyment of their former immunities. And the only change is that effected by the 49th section, which says that they "shall be assessed in respect of their *stipends*;" but which is significantly silent as regards their manses and their glebes.

There are other arguments derivable from the language of the Act, tending to the same conclusion. It appears that the mind of the Legislature was directed at the time to questions that might arise upon claims of exemption under its provisions. Thus, by the 50th section, the privileges of the College of Justice, and of the officers of the Queen's household, are declared inoperative to protect them against assessments for the relief of the poor. So that, in the case of the clergy, the exemption is *partly* put an end to; whereas, in the case of the College of Justice and of the officers of the Queen's household, it is made to cease altogether.

The Act of Parliament, therefore, while it makes the minister's stipend liable to be rated for the relief of the poor, did not intend that he should be assessed in

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respect of his manse, and the small bit of ground round his dwelling.

Lord Chancellor's opinion.

I have, therefore, to move your Lordships that this appeal be dismissed.

Lord BROUGHAM:

Lord Brougham's opinion.

My Lords, I quite agree with my noble and learned friend, that the Court below came to a right conclusion in this case. We are here on the construction of an Act of Parliament, and an Act of Parliament alone, namely, the 8 & 9 Vict. c. 83; but we cannot well construe it without having regard to the previous usage. Now, I think the case of *Cargill* v. *Tasker* was rightly decided. At all events, the decision is now of more than thirty years' standing; and it has been acted on, and may be taken to make the law on this point. Be that, however, as it may, I hold the usage, and practice, and fact (independent of the construction of the law in that case) to be most material. Now, of the fact there can be no doubt whatever; we have it not only from that decision, but we have it in the opinions of the learned Judges in *this* case, whose construction of the law is now under review; but of whose statement *of facts* there can be no doubt, and to whose statement of facts, so much within their own knowledge, the greatest deference is due. Now Lord *Cuninghame* affirms (*a*), in words as strong as it is possible to put it, that there has been, time out of mind, in fact for ever, an exemption in respect of the glebe and manse. It is true, my Lord *Succoth*, a very high authority on these matters, does say in a note read from his manuscript (*b*), that he has known contrary

(*a*) See Lord Cuninghame's opinion in the Second or New Series, vol. xiii. p. 341.

(*b*) This note was from a printed Court of Session Paper deposited in the Advocates' Library at Edinburgh.

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instances; in other words, that the exemption, in point of law, has not been so absolute and uniform as is contended: and that in some cases he has known ministers charged. But observe, there are nine hundred or a thousand cases of ministers in the Church of Scotland, and for two centuries and a half the exemption has existed; and all his Lordship can say is, that in some few instances he has known them charged.

Now, the Legislature, by the 50th section of the existing Poor-Law Act, with respect to the College of Justice, show that claims of exemption were peculiarly under their consideration at the time they passed the 49th section; by which they enact "that clergymen shall be liable to be assessed for the poor in respect of their stipends," and they say no more. They, knowing the exemption that had existed, limit the legal obligation to the stipend.

In a word, my Lords, the Legislature confines its repeal of the exemption to the stipend, leaving the manse and glebe where they stood before.

Interlocutor affirmed.

CONNELL & HOPE.—ROBERTSON & SIMPSON.